

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

BARCLAYS CAPITAL INC., MERRILL LYNCH,
PIERCE, FENNER & SMITH INCORPORATED, AND
MORGAN STANLEY & CO. INCORPORATED,

Plaintiffs,

- v -

THEFLYONTHEWALL.COM, INC.,

Defendant.

10/31/2011

06 CV 4908 (DLC)

**PROPOSED ORDER &
JUDGMENT**

HON. DENISE L. COTE, District Judge:

WHEREAS, on March 18, 2010, this Court entered an Opinion and Order (Dkt. 136) and Permanent Injunction (Dkt. 138), and on March 22, 2010 entered Judgment (Dkt. 140) that defendant Theflyonthewall.com, Inc. (“Fly”) had committed the New York State tort of “hot news” misappropriation against plaintiffs Barclays Capital Inc. (“Barclays Capital”), Merrill Lynch, Pierce, Fenner & Smith Incorporated (“Merrill Lynch”), and Morgan Stanley & Co. Incorporated (“Morgan Stanley”)¹ (collectively, “Plaintiffs”) and infringed upon copyrights in seventeen research reports owned by Morgan Stanley and Barclays Capital;

WHEREAS, Fly appealed this Court’s Judgment and Permanent Injunction concerning Plaintiffs’ “hot news” misappropriation claims to the United States Court of Appeals for the Second Circuit (Docket No. 10-1372); and

¹ Pursuant to its conversion from a corporation to a limited liability company, plaintiff Morgan Stanley & Co. Incorporated has changed its name to Morgan Stanley & Co. LLC, and is now an indirect wholly-owned subsidiary of Morgan Stanley.

WHEREAS, in an Opinion dated June 20, 2011 (Dkt. 200) and Mandate dated August 18, 2011 (Dkt. 201), the Second Circuit concluded that federal copyright law preempts Plaintiffs' "hot news" misappropriation claims, reversed this Court's Judgment to that extent and remanded with instructions to dismiss Plaintiffs' "hot news" misappropriation claims.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED:

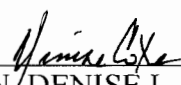
1. For the reasons stated in the Second Circuit Court of Appeals' Opinion dated June 20, 2011, judgment is entered for defendant Theflyonthewall.com, Inc. on Plaintiffs' "hot news" misappropriation claims, and Plaintiffs' "hot news" misappropriation claims are hereby dismissed.

2. The Permanent Injunction as it relates to Plaintiffs' claims of "hot news" misappropriation is hereby vacated in its entirety.

3. The Permanent Injunction and Judgment, as well as all relief afforded in connection therewith, remain in full force and effect with respect to Morgan Stanley's and Barclays Capital's copyright claims against Fly.

4. Costs have been awarded to defendant Theflyonthewall.com, Inc. as set forth in the Stipulated Order of this Court dated October 11, 2011 (Dkt. 202) and the Judgment of the Second Circuit entered October 14, 2011 (Dkt. 204).

Dated: New York, New York
October 31, 2011



HON/DENISE L. COTE
United States District Judge